



BILLING CODE: 4810-02

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Renewal without Change of the Requirement for Information Sharing Between Government Agencies and Financial Institutions

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. § 3506(c)(2)(A)). Currently, FinCEN is soliciting comments concerning the renewal without change of the “Information sharing between government agencies and financial institutions” under 31 CFR § 1010.520, generally referred to as the 314(a) program.

DATES: Written comments are welcome and must be received on or before [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Direct all written comments to the Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183. Attention: PRA Comments— 314(a) program. Comments also may be submitted by electronic mail to the following Internet address: regcomments@fincen.gov with the caption in the body of the text, “Attention: PRA Comments— 314(a) program.”

Inspection of comments. Comments may be inspected between 10 a.m. and 4 p.m. in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905-5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949-2732 and select Option 3.

SUPPLEMENTARY INFORMATION:

I. Background

A. *Statutory Provisions*

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT ACT” or “Act”), Public Law 107-56. Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act (“BSA”), codified at 12 U.S.C. §§ 1829b and 1951–1959 and 31 U.S.C. §§ 5311–5314 and 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury to administer the BSA has been delegated to the Director of FinCEN.

Of the Act’s many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance.

As with many other provisions of the Act, Congress has charged the U.S. Department of the Treasury with developing regulations to implement these information-sharing provisions.

Subsection 314(a) of the Act states in part that:

[t]he Secretary shall . . . adopt regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in, or reasonably suspected based on credible evidence of engaging in, terrorist acts or money laundering activities.¹

B. Overview of the Current Regulatory Provisions Regarding the 314(a) Program

On September 26, 2002, FinCEN published a final rule implementing the authority contained in section 314(a) of the Act.² That rule (“the 314(a) rule”) required U.S. financial institutions, upon FinCEN’s request, to search their records to determine whether they have maintained an account or conducted a transaction with a person that a Federal law enforcement agency has certified is suspected, based on credible evidence, of engaging in terrorist activity or money laundering.³ The rule was expanded on February 10, 2010 to enable certain entities other than Federal law enforcement agencies to benefit from 314(a) requests to industry. As amended, the rule now also enables certain foreign law enforcement agencies, state and local law enforcement agencies, as well as FinCEN, on its own behalf and on behalf of appropriate components of the Department of the

¹ Pub. L. 107-56, Title III, § 314, Oct. 26, 2001, 115 Stat. 307, as amended by Pub. L. 108-458, Title VI, § 6202(f), Dec. 17, 2004, 118 Stat 3745.

² Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 FR 60,579 (Sept. 26, 2002).

³ 31 CFR § 1010.520.

Treasury, to initiate 314(a) queries.⁴ Before processing a request, FinCEN requires the requesting agency to certify that, in the case of money laundering, the matter is significant, and that the requesting agency has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program.

Since its inception, the 314(a) program has yielded significant investigative benefits for law enforcement users in terrorist financing and/or significant money laundering cases. Feedback from the requesters and illustrations from sample case studies consistently demonstrate how useful the program is in enhancing the scope and expanding the universe of investigations. In view of the proven success of the 314(a) program, FinCEN seeks to renew without change the 314(a) program.

II. Paperwork Reduction Act (“PRA”):⁵

Title: Information sharing between government agencies and financial institutions.

OMB Number: 1506-0049.

Form Number: Not Applicable.

Abstract: 31 CFR Chapter X, Information sharing between government agencies and financial institutions (31 CFR § 1010.520) details the requirements of section 314(a) of the USA PATRIOT Act. Each financial institution (as defined in 31 U.S.C. § 5312(a)(2))

⁴ Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity, 75 FR 6560 (Feb. 10, 2010).

⁵ The Paperwork Reduction Act does not apply to the requirement in section 1010.520(b)(2) concerning reports by financial institutions in response to a request from FinCEN on behalf of a Federal law enforcement agency. *See* 5 CFR §1320.4(a)(2). Therefore, this renewal applies only to the use of the 314(a) program with respect to queries initiated by non-federal law enforcement entities.

or (c)(1)) should refer to its Chapter X part for any additional special information sharing procedures.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses or other for-profit and non-profit organizations, and the Federal, state, and local governments.

Frequency: As required.

Estimated Number of Respondents: 20,134.⁶

Estimated Time Per Respondent: 54 hours annually.⁷

Estimated Total Annual Burden Hours: 1,087,236.⁸

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (“OMB”) control number. In accordance with 31 CFR § 1010.330(e)(3), a person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be

⁶ On an annual basis, there are approximately 20,134 covered financial institutions, consisting of commercial banks, savings associations, credit unions, securities broker-dealers, future commission merchants, and certain trust companies, life insurance companies, mutual funds and money services businesses.

⁷ Estimated cases/subjects per annum subject to the Paperwork Reduction Act include: 10 from FinCEN, 50 from state/local law enforcement, and 30 from European Union countries approved by treaty, for a total of 90 request per annum, and each request generally contains 9 subjects (including aliases). Each subject requires 4 minutes to research, resulting in $(90 \times 9 \times 4 \div 60) = 54$ hours per year.

⁸ Burden computation is as follows: 54 hours per year per respondent times 20,134 respondents $(54 \times 20,134) = 1,087,236$ hours.

summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 5, 2012_____

Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network

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